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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: DITROPAN XL ANTITRUST  
LITIGATION

CASE NO. M:06-CV-01761-JSW

MDL No. 1761

This Order Relates to:

ALL CASES

**ORDER DIRECTING PARTIES  
TO SUBMIT ADDITIONAL  
BRIEFING**

\_\_\_\_\_ /

Defendants Johnson & Johnson and Alza Corporation (“Alza”) (collectively, “Defendants”) have moved to dismiss the complaint filed by plaintiffs Stephen L. LaFrance Holdings (“LaFrance”), SAJ Distributors (“SAJ”), and American Sales Company (“ASC”) (collectively, “Direct Purchaser Plaintiffs”) on several grounds, including the failure of LaFrance and SAJ to join McKesson Corporation (“McKesson”). Direct Purchaser Plaintiffs admittedly did not purchase Ditropan XL from Alza or Johnson & Johnson. Rather, Direct Purchaser Plaintiffs’ claims are premised on the purchases of Ditropan XL made by McKesson and Cardinal Health, Inc. (“Cardinal”) from Ortho-McNeil Pharmaceutical, Inc. (“Ortho-McNeil”), a wholly owned subsidiary of Johnson & Johnson. Direct Purchaser Plaintiffs bring

1 their claims pursuant to purported assignments<sup>1</sup> of their antitrust claims from McKesson to SAJ  
 2 and LaFrance and from Cardinal to ASC.

3 McKesson only assigned SAJ and LaFrance fifty percent of its claims against  
 4 “Defendants ... arising out of or relating to McKesson’s purchase of Ditropan XL.”  
 5 (Declaration of Michael A. Sitzman in support of Defendants’ motion to dismiss Direct  
 6 Purchaser Action, Ex. 2.) Federal common law governs the validity of the purported  
 7 assignment. *In re Fine Paper Litig.*, 632 F.2d 1081, 1090 (3d Cir. 1980). Defendants do not  
 8 argue, and the Court does not find, that the fact that the assignment only purports to provide  
 9 fifty percent of McKesson’s claims relating to its purchase of Ditropan invalidates the  
 10 assignment. However, due to the fact that the purported assignment was only partial, SAJ and  
 11 LaFrance cannot bring their antitrust action against Defendants without McKesson’s joinder.  
 12 See *In re Fine Paper Litig.*, 632 F.2d at 1091. The reason for this rule is that while partial  
 13 assignments are recognized, “the rights of the obligor to be free of successive and repeated suits  
 14 growing out of the basic same facts are also protected by the prudent use of joinder rules.” *Id.*

15 Although it is clear that SAJ and LaFrance cannot maintain their claims against  
 16 Defendants without the joinder of McKesson, the Court does not have sufficient information  
 17 before it to determine whether the Court should order the joinder of McKesson or dismiss this  
 18 action for failure to join an indispensable party. Therefore, the Court directs the parties to file  
 19 supplemental briefing to address this issue, including whether this Court would have personal  
 20 jurisdiction over McKesson. Direct Purchaser Plaintiffs shall file a supplemental brief no  
 21 longer than five pages by no later than March 23, 2007. Defendants shall file a responsive  
 22 supplemental brief no longer than five pages by no later than April 6, 2007.

23  
 24 Dated: March 9, 2007

  
 JEFFREY S. WHITE  
 UNITED STATES DISTRICT JUDGE

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 27 <sup>1</sup> The Court refers to the assignment as only a “purported” assignment because in the  
 28 pending motion to dismiss, Defendants argue that the assignment is invalid because  
 McKesson did not obtain Ortho-McNeil’s consent. The Court has not yet ruled on the  
 pending motion to dismiss.

**United States District Court**  
For the Northern District of California

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